Legal and Business Affairs

WGBH
One Guest Street
Boston
Massachusetts
02135

617 300 4349 tel
617 300 1014 fax
wgbh.org

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X

WPIX, INC., WNET.ORG, AMERICAN BROADCASTING COMPANIES, INC., CBS BROADCASTING INC., CBS STUDIOS, INC., NBC STUDIOS, INC., OFFICE OF THE COMMISSIONER OF BASEBALL, MLB ADVANCED MEDIA, L.P., COX MEDIA GROUP, INC., THE CW TELEVISION STATIONS INC., DISNEY ENTERPRISES, INC., FISHER BROADCASTING-SEATTLE TV, L.L.C., FOX TELEVISION STATIONS, INC., NBC UNIVERSAL, INC.TRIBUNE, TELEVISION HOLDINGS, INC., TRIBUNE TELEVISION NORTHWEST, INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL NETWORK TELEVISION, LLC, UNIVISION TELEVISION GROUP, INC., THE UNIVISION NETWORK LIMITED PARTNERSHIP, TELEFUTURA NETWORK, WGBH EDUCATIONAL FOUNDATION, and PUBLIC BROADCASTING SERVICE,

Plaintiffs,

v.

IVI, INC. and TODD WEAVER,

Defendants.

---X

10 Civ. 7415(NRB)

DECLARATION OF ERIC BRASS

I, Eric Brass, hereby declare, under penalty of perjury, that the following statement is true and correct, to my personal knowledge.

1. I am Corporate Counsel and Associate Clerk of the WGBH Educational Foundation ("WGBH"). In this position I am responsible for, among other things, the protection

of WGBH's intellectual property, pre-publication content review, and regulatory matters. I have held this position for 27 years, and have been employed by WGBH for 29 years.

2. The activities of ivi, Inc. ("ivi") have harmed and are harming WGBH.

3. It is my understanding that on September 13, 2010, ivi began offering online access to all of the programming broadcast by noncommercial educational broadcast stations WNET-TV (New York, NY) and KCTS-TV (Seattle, WA) (collectively the "Stations"), which are operated pursuant to authorizations issued by the Federal Communications Commission.

4. I understand that to subscribe to ivi's service, and to gain access to all of the programming on the Stations an individual with Internet access anywhere in the world need only (a) access the ivi website (http://www.ivi.tv/) on his or her computer; (b) create an account by providing an e-mail address and a password; (c) agree to the terms of an end user license; and (d) pay defendant ivi a fee. After a 30 day free trial, that fee is $4.99 per month.

5. I understand that in exchange for paying this monthly fee, an ivi subscriber may download, install and use on a computer (or other applicable device) the ivi TV application. I understand that this application allows the subscriber to access, anywhere in the world, television programming exhibited by the Stations. I also understand that for an additional fee of $0.99 per month, the subscriber is able to pause, fast-forward to catch-up and rewind the programming that ivi streams.

6. I understand that ivi plans to offer iPhone and Android compatible versions of ivi's TV application, and has already submitted an "iPad app" which ivi's chief executive officer has stated he expects to be available for sale within weeks. I also understand that ivi plans to make its service available to users of third-party set-top boxes, such as Vudu, Boxee, and Tivo.

7. The programming exhibited by the Stations that ivi is currently streaming includes copyrighted programming owned entirely or with others by WGBH. Such programming includes *NOVA*, *Frontline*, *American Experience*, *Antiques Roadshow*, *Arthur*, *Curious George*, *Martha Speaks*, and *Peep and the Big Wide World.*

8. ivi has not sought a license, or any type of consent or authorization from WGBH to stream the programming, exhibited by the Stations, especially the copyrighted programming owned by WGBH, and WGBH has not requested nor consented to any such streaming by ivi.

9. ivi's streaming of the Stations' television signals represents the theft of WGBH's television programming. As non-commercial television stations, the carriage of programming produced by WGBH, other PBS supplied programming, and programming produced by each of them for their local viewers, is a principal basis for support from the Stations' viewers and funders. This viewer and funder support provides the revenue from which the Stations, and other public television stations, purchase programming through PBS from producers such as WGBH. WGBH will not be able to produce national programming should public television stations be harmed by ivi's streaming of their signals.

10. ivi's streaming of the Stations' broadcast signals means that the station's television programming will be effectively shipped all around the world without the ability of WGBH to control its distribution, causing WGBH to lose control of some of its most valuable property – the content of its programming, especially its copyrighted programming. In some instances, such worldwide distribution will violate and exceed the basis upon which WGBH holds or shares rights in the programming with other copyright holders, and ivi's conduct jeopardizes the current and potential future arrangements under which WGBH shares copyrights

with others. It also will undermine WGBH's ability to license its programming for international exhibition, further eroding critical revenue sources upon which program production relies.

11. The ivi TV application enables ivi subscribers to packetize the Stations broadcast signals and their programming, enabling the storage of these programs on personal computers, laptops, iPhones, iPads, and other personal devices. ivi's plans to offer iPhone and Android compatible versions of ivi's TV application will further enable the packetizing of the Stations' broadcast signals and their programming, thereby accelerating Stations' loss of control of the content of its programming.

12. ivi's current action and its public statements concerning its plans to expand into other broadcast markets, which could include WGBH's own local Boston market, may encourage others to similarly steal the Stations' broadcast signals and their programming.

13. WGBH's principal source of revenue is from donations from our viewers and from underwriting by foundations, organizations, and the U. S. government. We are skeptical that ivi's audience will result in additional support of this nature; indeed, we are fearful that ivi's offering of programming which is now broadcast on the Stations and distributed exclusively for broadcast on other U. S. non-commercial stations will result in a reduction in viewer support and underwriting for these broadcasts in the New York, Seattle, and other domestic markets. In this manner, ivi's operations threaten the operational structure of the Stations and of other non-commercial stations across the United States.

14. For these reasons, WGBH will suffer immediate and irreparable injury unless the court acts to enjoin ivi's service.

I declare under penalty of perjury that the foregoing is true and correct.

Eric Brass

Eric Brass, Corporate Counsel & Associate Clerk

Executed on September 29th, 2010.